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| Investigation by the Department of Telecommunications |) | |
| and Energy on its own Motion into the Appropriate Pricing, |) | |
| based upon Total Element Long-Run Incremental Costs, |) | D.T.E. 01-20 |
| for Unbundled Network Elements and Combinations of |) | |
| Unbundled Network Elements, and the Appropriate Avoided |) | |
| Cost Discount for Verizon New England, Inc. |) | |
| d/b/a Verizon Massachusetts' Resale Services in the |) | |
| Commonwealth of Massachusetts |) | |
| |) | |

On February 11, 2002, AT&T filed its opposition to Verizon MA's motion to admit exhibits into evidence ("Opposition"). AT&T objected to the admission of the following eight exhibits: Exhibit VZ-10, Exhibit VZ-25, Exhibit VZ-32, Exhibit VZ-33, Exhibit VZ-35, Exhibit VZ-48, Exhibit VZ-50 and Exhibit VZ-ATT 1-70. AT&T's opposition is without merit because, at best, its arguments go to the weight of the evidence, not to whether the documents are admissible.

AT&T objects to Exhibit VZ-10, a depreciation study filed by the Puerto Rico Telephone Company “with technical assistance from Snively King Majoros O’Connor & Lee, Inc.,” the firm for whom AT&T’s depreciation witness, Mr. Lee, is a vice president. AT&T’s objection to the admission of the study is based on the argument that Mr. Lee testified that he was not personally involved in the creation of the document, and that his firm did not choose the depreciation lives contained in Exhibit VZ-10 (Opposition at 1).

In addition, AT&T states that depreciation lives proposed by the Puerto Rico Telephone Company “have no relevance” to the lives that should be set for Massachusetts (*id.*, at 1-2). Neither argument is availing, since both go to the weight of the evidence, not its relevance. There is no dispute that the service lives for telecommunications investment is at issue in this case, and Exhibit VZ-10, at a minimum, is probative evidence on that issue. To the extent that it was prepared with the technical assistance of Mr. Lee’s firm and it may contradict the position he has taken in this proceeding, it is relevant to impeach the credibility of his proposals here. The Department heard Mr. Lee’s testimony about his role and that of his firm in producing Exhibit VZ-10, and the Department can consider that testimony in placing appropriate weight on the document.

Similarly, AT&T’s objection to Exhibit VZ-25, goes to the weight of the evidence, not to whether it is admissible. AT&T argues that because its witness, Mr. Donovan, did not agree with statements in the exhibit, the document should not be admitted into evidence (Opposition, at 2). AT&T has confused its witness’ disagreement with the substance of the document with whether the document, itself, is relevant to this proceeding. AT&T may believe, as it states in its Opposition, that the document is dated, and it can present that argument in its brief. However, the document addresses an issue that is in dispute in this proceeding (*i.e.*, the deployment of GR-303), and is therefore relevant and admissible.¹

¹ The argument that the document has not been properly authenticated is also without merit. AT&T’s witness testified that he recognized the document (Tr. 5, at 818), no suggestion has been made that the document is not what it purports to be, and it was authored by MCI, the predecessor to an active party in this proceeding, WorldCom (which has not challenged the authenticity of the document).

Exhibits VZ-32 and VZ-33 relate to exhibits that were filed in a Pennsylvania proceeding that was referenced in the surrebuttal testimony of AT&T's witness, Mr. Turner (Exh. ATT-17, at 18-19). The exhibits rebut the assertions made by Mr. Turner, and therefore are relevant to impeach his testimony. There is no legitimate dispute about the authenticity of the documents and counsel for Verizon MA represented on the record that the documents were complete (Tr. 6, at 1013). Relevant documents filed in other similar UNE proceedings are probative of issues in this proceeding, and are therefore relevant and admissible.

AT&T objects to the admission of Exhibit VZ-35, a settlement agreement entered into by Verizon, AT&T and WorldCom relating to collocation rates, terms and conditions. AT&T's objection seems to be based on the proposition that it should have been introduced earlier in the proceeding (Opposition at 4). In fact, it was marked during the cross-examination of AT&T's witness, Mr. Turner, and contradicts his testimony that the rate for DC Power proposed by Verizon MA is higher than that contained in a settlement by Verizon in Nevada (Exh. ATT-16, at 38-39). Exhibit VZ-35, a publicly available document, establishes collocation rates agreed to by AT&T in New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia and Virginia (Exh. VZ-35, at 2) and is probative of the issue of whether the rates proposed by Verizon MA are, as asserted by Mr. Turner, inconsistent with those established in other states (Exh. ATT-16, at 39). Exhibit VZ-35 is therefore relevant and admissible as evidence in this proceeding.

Exhibit VZ-48, the switch cost testimony of Mr. Turner from another jurisdiction (Virginia), was introduced during the cross-examination of AT&T's switch cost witness, Ms. Pitts (Tr. 11, at 2025-2026). Again, the material contained in Exhibit VZ-48 is

relevant to (and directly contradicts) AT&T's testimony on issues that are material to this proceeding. Since Mr. Turner, who alleged that he applied the "industry standard" for the percentage of traffic that occurs during the busy hour, contradicts Ms. Pitts' testimony regarding the correct assumption for the percentage of traffic that occurs during the busy-hour (Tr. 11, at 2026), it is appropriate for use to impeach her testimony and is therefore admissible evidence in this case. AT&T's assertion that the document is not admissible because it was not introduced during the cross examination of AT&T's switching cost witness rather than Mr. Turner is unfounded. In this proceeding Mr. Turner testified regarding collocation and interoffice transport, not switching costs. Had Verizon MA attempted to introduce the Virginia switching cost testimony during the cross-examination of Mr. Turner, it is likely that AT&T would have objected on the basis that switching cost assumptions were beyond the scope of his testimony. Clearly, the appropriate witness to be cross-examined on prior inconsistent switching cost positions advocated by AT&T was the switching cost witness, Ms. Pitts.

Finally, Exhibits VZ-50P and VZ-ATT 1-70, contain information about the cost incurred by AT&T for its most recently purchased digital switch. AT&T's sole basis for shielding its cost information from the Department's review is that Ms. Pitts' testimony suggests that there are some limitations to the data contained in AT&T's proprietary response (Opposition at 5, citing Tr. 11, at 2039-2042 [sealed]). Again, this is a briefing issue that goes to the weight of the evidence, not to whether the information has probative value and is relevant in this proceeding. The Department has already ruled that information about AT&T's network is relevant to verify the accuracy of the inputs to the cost model proposed by AT&T. *Interlocutory Order on Verizon's Appeal of Hearing*

Officer's August 8, 2001 Ruling on Motions to Compel, at 12 (August 31, 2001). Exhibits VZ-50 and VZ-ATT 1-70, which contain AT&T's switching costs, are relevant to an issue in this proceeding and therefore, must be admitted into evidence.

Accordingly, AT&T's objections to the admission of evidence are without merit and Verizon MA's motion for the admission of all marked exhibits should be granted.

Respectfully submitted,

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Dated: February 13, 2002